

# **EXHIBIT C**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4 \_\_\_\_\_ )  
5 CISCO SYSTEMS, INC., )

6 Plaintiff, )

7 vs. )

No. 5:14-cv-05344-BLF  
(PSG)

8 ARISTA NETWORKS, INC., )

9 Defendant. )  
10 \_\_\_\_\_ )  
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17 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

18 VIDEOTAPED DEPOSITION OF CHARLES GIANCARLO

19 Redwood Shores, California

20 Monday, April 25, 2016  
21  
22  
23

24 Reported by: LANA L. LOPER, RMR, CRR, CCP,  
25 CME, CLR, CSR No. 9667

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

No. 5:14-cv-05344-BLF  
(PSG)

Deposition of CHARLES GIANCARLO, taken on  
behalf of Plaintiff, at 555 Twin Dolphin Drive, 5th  
Floor, Redwood Shores, California beginning at 9:43 a.m.  
and ending at 2:55 p.m., on Monday, April 25, 2016,  
before Lana L. Loper, RMR, CRR, CCP, CME, CLR, CSR No.  
9667.

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25 ALSO PRESENT: JAKE KROHN, VIDEOGRAPHER

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1 during my time there.

2 MR. NEUKOM: I think we've been going about an  
3 hour.

4 Should we take a five- or ten-minute break?

5 MR. FERRALL: Please. Thank you.

6 THE VIDEOGRAPHER: Going off the record. The  
7 time is 10:44.

8 (Discussion off the record.)

9 THE VIDEOGRAPHER: We are back on the record at  
10 11:01.

11 BY MR. NEUKOM:

12 Q Mr. Giancarlo, when you were a high-ranking  
13 executive at Cisco, you were in charge of negotiating and  
14 pursuing a Cisco lawsuit against Huawei?

15 Do I have that right?

16 A That's correct.

17 Q I'm going to ask you some questions about that  
18 lawsuit or your participation in that lawsuit today.

19 However, I don't represent you today --

20 A Uh-huh.

21 Q -- to put it mildly.

22 If I -- nonetheless, when I ask you questions  
23 about your involvement in that lawsuit, I would like you  
24 please to refrain from including in your answer any  
25 attorney-client communications that you had as a Cisco

1 executive at that time.

2 Do you understand that request?

3 A I do.

4 Q Likewise, I would like you to refrain from

5 including in your answers any information or

6 communications that might reflect attorney work product.

7 This one is a little tougher for a nonlawyer.

8 So, for example, if you undertook some particular course

9 of conduct because a Cisco attorney instructed or

10 requested you to do so, that may be what attorneys call

11 attorney work product.

12 A I see.

13 Q Do you understand --

14 A I -- yes.

15 I believe that, depending on the questions you  
16 ask, it may be hard to answer a question or might only be  
17 able to provide a partial answer, which would be  
18 inadequate to really to fully answer the question.

19 Q Okay. At Arista, or within Arista, have you at  
20 any point disclosed, within Arista, any attorney-client  
21 privileged communications you had when you were a Cisco  
22 executive?

23 A Certainly not.

24 Q Well, if I ask you a question today, and you

25 think your ability to answer it is compromised, based on

1 the constraints of protecting Cisco's client privilege or  
2 attorney work product protections, I would prefer that  
3 you please tell me that, rather as an initial matter,  
4 rather than volunteer the information, and then we'll see  
5 where we can go.

6 A Understood.

7 Q Okay. What I'm nervous about is, if I ask you a  
8 question, even though I don't intend for it to elicit  
9 attorney-client privilege, and you nonetheless interpret  
10 that and answer it by disclosing that -- such material,  
11 one may argue -- I would not argue, but one may argue,  
12 that is an attorney for Cisco, waiving Cisco's  
13 attorney-client privilege by asking you to disclose that  
14 information. And that's the furthest thing from my  
15 intention for today.

16 Do you understand where I'm coming from?

17 A I do.

18 Q Without disclosing attorney-client  
19 communications, can you describe for me, as you sit here  
20 today, your understanding of what the Cisco versus Huawei  
21 lawsuit was about?

22 A Indeed.

23 Q Please do.

24 A Sometime early in the decade -- I can't tell  
25 you, and I don't believe it was a specific date; it was

1 accumulated evidence over time.

2 Starting, you know, in the early part of the  
3 2000s, we became aware that Huawei was selling identical  
4 product in China.

5 Q When you say "we," you mean Cisco?

6 A Many of us at Cisco, right.

7 To some extent, we had known that for some time.

8 Then, upon better analysis, and also because of  
9 approaches that came to us through various government  
10 agencies -- and I won't go into detail about that -- we  
11 became aware of the fact that not only did they look and  
12 feel like Cisco product, but that they might be using  
13 Cisco software.

14 And so we did some testing on the products. And  
15 as you might imagine, that took some months to do the  
16 testing on the products.

17 And we discovered several things, one of which  
18 is that -- and, I'm sorry, this gets a bit technical --  
19 they were using a different --

20 Q Can I interrupt you for just a moment?

21 A Yes.

22 Q I just want to make sure you're -- in a way, I'm  
23 excited to hear about this testing and what you learned  
24 from it. But I want to make sure this is not the kind of  
25 thing that Cisco attorneys instructed you to do or you



1 participated in an effort overseen by a legal function.

2 A This was not -- this is entirely on my own.

3 This is a business set of -- what I'm talking about right

4 now is about a set of business activities that we took --

5 that I undertook -- not I -- I mean, obviously, it's a

6 group of people undertook --

7 Q Okay.

8 A -- outside of the legal function at the time.

9 Q And at the time, you were a senior vice

10 president --

11 A Right.

12 Q -- commanding, if you will, 10,000-plus

13 engineers and employees?

14 A Correct.

15 And I mentioned one of the groups was the access

16 router group. And that was a specific-at-the-time set of

17 products that we were -- that we had learned about and

18 that I was concerned about.

19 Q Okay. Please continue.

20 I'm sorry for the interruption.

21 A No trouble.

22 Q You were just telling me what you learned by  
23 looking at some of these Huawei products.

24 A By testing, correct.

25 What we found out is that they were using a

1 different processor than we were using, which -- and that  
2 processor had a different compiler. So when I say, they  
3 were using the same software, they were not using the  
4 same object code. But we expected they were using the  
5 same source code.

6 And unfortunately, from a testing standpoint,  
7 you couldn't test -- you couldn't analyze it simply by  
8 testing the -- by comparing the object code because the  
9 object code would be entirely different because of the  
10 different processor or different compiler.

11 So we had to try different tests. And we -- we  
12 tried a variety of tests.

13 Now, just again to give more context, one  
14 thing -- some things that were entirely clear is that the  
15 products looked the same. What I meant by, "looked the  
16 same," they had the same general appearance, the  
17 interface; the ports were in the same location; color was  
18 vaguely similar; the numbers of the products.

19 You know, we're talking about a family of  
20 products, of which it might have been a couple of dozen,  
21 each designated or named with a number, 2501, 2502, 2515,  
22 blah, blah, blah, were identical on their products and  
23 ours.

24 And we would test the products in various ways:  
25 functionality, the bugs in the products.

1 And what we found, the smoking gun, if you will,  
2 from our perspective, was that the products were bug --  
3 we called it -- this was our phrase, "bug-compatible."  
4 In other words, their products had very similar bugs,  
5 therefore, the same bugs, I should say, as the Cisco  
6 products.

7 As a matter of public record, we then -- I, in  
8 particular -- can we go off the record for a moment?

9 I just want to ask a question of my counsel.

10 MR. NEUKOM: Sure.

11 THE VIDEOGRAPHER: Going off the record. The  
12 time is 11:09.

13 (Discussion off the record.)

14 THE VIDEOGRAPHER: We are back on the record at  
15 11:15.

16 BY MR. NEUKOM:

17 Q Again, Mr. Giancarlo, being mindful not to  
18 disclose attorney-client communication that you had as an  
19 executive at Cisco, what did you do next after you  
20 discovered this bug compatibility between Huawei versus  
21 Cisco products?

22 A Yes.

23 As I mentioned, Huawei was selling these  
24 products primarily in China at the time. And for the --  
25 approximately the next year, we spent, and I personally,

Q And again, just because -- because the timing has changed since the last time I asked you about the investigation, I intend to be asking only for information which you know that is not attorney-client privileged or doesn't disclose attorney work product.

1 I say that to you now because we have moved in  
2 time a couple of months.

3 A I understand.

4 Q You mentioned, Mr. Scheinman was involved. So  
5 if, for example, by this point in time you were working  
6 with legal, and you're less clear on whether the analysis  
7 and investigation was driven by or reflective of attorney  
8 input, then I would invite to you stop and re- -- just to  
9 make sure --

10 A Yeah.

11 Q -- that it's not privileged or work product?

12 A I will do the best I can.

13 Q Okay. So to the extent you can answer my  
14 question --

15 A Yes.

16 Q -- while being confident you're not disclosing  
17 Cisco or attorney work product privileged materials,  
18 let's try to do that.

19 And let me, just because it's unfair of you to  
20 remember the last page of my speaking --

21 A Uh-huh.

22 Q -- let me try to give you the question again.

23 Had you made the determination by that point in  
24 time that Huawei had copied the entirety of Cisco's  
25 source code, which is to say, other than changing Cisco

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1 it carefully to make sure you agreed with every aspect of  
2 the document?

3 A I did review it, yes.

4 Q And as you sit here today, you remain willing to  
5 be subject to the penalty of perjury for the contents of  
6 these documents, at least as of February 2003?

7 A Yes.

8 Q Okay. If you could please turn to -- and let me  
9 take a step back and say or ask you this:

10 Without disclosing the substance of any  
11 attorney-client communications, what was the point of  
12 this declaration when you signed it in February 2003?

13 A This was part of either the preparation or of  
14 the actual litigation of the Cisco lawsuit that we opened  
15 against Huawei.

16 So in our earlier conversation, we were leading  
17 up to this point in time. And I had mentioned that they  
18 had opened up a sales office in Texas and had negotiated  
19 a reseller agreement with the EOS company. And it's a  
20 matter of public record.

21 We decided to sue Huawei on the basis of  
22 utilizing our source code to sell substantially identical  
23 product.

24 I want to make it clear, we made the decision to  
25 sue them in the U.S., not in China, and that the focus

1 was on protecting our source code.

2 Q Not protecting, for example, the second meaning  
3 of CLI that you described today, which is the textual  
4 commands and the structure of those textual commands?

5 A My entire focus as the business leader in this  
6 was on the source code.

7 If one doesn't protect your source code, it can  
8 be deemed to be in the public -- you know, it could be  
9 deemed in the public -- you have to protect your  
10 intellectual property in order to maintain its ability to  
11 be protected.

12 As I mentioned, the source code defines the  
13 entire operation of the product. You know, the hardware  
14 can be easily recreated, and you put the source code on  
15 top of it, and you have the identical product.

16 And so that was the entire focus, my entire  
17 focus from the beginning, in terms of our -- in terms of  
18 our complaint against Huawei.

19 Q Okay. So you, when you submitted this  
20 declaration, or when you signed this declaration in  
21 February 2013 (sic), you, as a high-ranking executive at  
22 Cisco with over 10,000 employees reporting directly or  
23 indirectly to you --

24 A Yes.

25 Q -- your aim was to protect Cisco's source code?

1 Q Cisco CLI can mean source code?

2 A Correct.

3 Q Or Cisco CLI can mean, I think what you called  
4 before, textual commands and elaborate structure of those  
5 textual commands?

6 A Correct.

7 Q You testified, I think earlier today, that you  
8 thought, in 2003, you thought -- 2014, Cisco was entitled  
9 to copyright -- legal protection for its source code?

10 A Correct.

11 Q But that Cisco was not entitled to any such  
12 protection for the textual commands and structure of  
13 those commands within Cisco CLI?

14 A I believe that's now open industry standard.

15 Q When do you believe that became open industry  
16 standard, mainly the textual commands and structure of  
17 Cisco CLI?

18 A I can tell you, I believed -- when I signed this  
19 document, I believed it in the early 2000s. I don't  
20 think I thought much about it before that.

21 Q How can you be certain? It's now -- it's now  
22 spring of 2016.

23 A Yeah.

24 Q And you're telling me now, over 13 years later,  
25 you are certain under oath, as you sit here today --



1 A Uh-huh.

2 Q -- that you had a conception of what was versus

3 what was not --

4 A Right.

5 Q -- copyrightable about Cisco's --

6 A Right.

7 Q -- Cisco CLI?

8 A Yes.

9 And I mentioned before that the basis of that is

10 based on privileged Cisco information.

11 Q If you look here at paragraph 12 --

12 A Uh-huh.

13 Q -- paragraph -- in paragraph 12 you write,

14 "Huawei's unlawful copying of Cisco's copyrighted

15 materials, including the IOS code, the CLI, and the user

16 manuals, will cause Cisco substantial irreparable injury

17 if it is not enjoined by the Court." Let me stop there

18 for a minute.

19 When you talked about Cisco copyrighted

20 materials, you said, including the IOS code, what were

21 you referring to there?

22 A Source code.

23 Q When you said, the user manuals, what were you

24 referring to?

25 A User manuals, printed manuals.

1 Q When you said, the CLI, what were you referring  
2 to?

3 A The code implementing the CLI.

4 Q Here again, your testimony is today that when  
5 you said, the IOS code -- and you also said, the CLI,  
6 with both of those different phrases -- you meant to be  
7 referring to simply CLI source code?

8 A Yes.

9 Q Continuing on to the next page, "Cisco  
10 proprietary IOS is one of the company's most valuable  
11 assets and a critical component of Cisco's business."

12 When you referred to Cisco's proprietary IOS,  
13 what were you referring to, source code?

14 A Yes.

15 Q When you say, "The same holds true for the CLI  
16 user interface implemented by the IOS," what is it  
17 exactly that you're testifying today you were intending  
18 to refer to in 2003 when you wrote this?

19 A You know, this gets now probably into both  
20 meanings of CLI. But, you know, it's the user interface  
21 implemented by the IOS. I mean, I think it speaks for  
22 itself.

23 Q So this sentence, quote, the same holds true for  
24 the CLI interface implemented by the IOS," your testimony  
25 today is that with that sentence, you meant to be

1 tens or hundreds or more Cisco products, they will create  
2 automated systems to interact with the Cisco products.  
3 They will spend money to create the automated systems to  
4 interact with Cisco products. So the customers spend  
5 money to do that. So that's a general explanation.

6 Q Let me repeat the question.

7 On what basis did you declare, under penalty of  
8 perjury in early 2003, that Cisco had expended hundreds  
9 of millions of dollars to develop the CLI user interface?

10 A That was not my understanding of the sentence.

11 My understanding of the sentence, under penalty  
12 of perjury, was that Cisco had spent hundreds of millions  
13 of dollars to construct the source code to implement  
14 features which had an interface, obviously, which was a  
15 CLI interface.

16 And I would tell you now that the sentence is  
17 badly constructed.

18 Q Misleading?

19 A I don't -- it -- I didn't -- I -- in hindsight,  
20 possibly misleading, but certainly not correct  
21 specifically or not -- it's difficult to interpret, given  
22 that it's a poorly constructed sentence.

23 Q As you sit here today, do you believe it was  
24 accurate as of 2003 that the CLI user interface  
25 implemented by the IOS was unique to Cisco?

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1           A    The source code that the IOS -- that implements  
2 the IOS is certainly unique to Cisco.

3           Q    When you say, the CLI interface -- I mean, in  
4 particular, the interface consisting of an elaborate  
5 structure of textual commands, is it true, do you agree  
6 as you sit here today, that in 2003, the Cisco CLI user  
7 interface was unique to the company, unique to Cisco?

8           A    I believe that the technical implementation of  
9 the CLI is unique to Cisco; that the command structure  
10 and syntax is not.

11          Q    It's your testimony today is that you were  
12 focused on Huawei's copying of Cisco source code, and you  
13 didn't care about their use of textual commands and the  
14 organization of those commands from the CLI?

15          A    Uh-huh.

16          Q    Am I hearing you right, that's your testimony so  
17 far?

18          A    That is correct.

19          Q    Why did you treat -- repeatedly in this  
20 declaration, why did you treat source code versus the CLI  
21 user interface as two distinct topics?

22          A    I did not.

23               MR. FERRALL:  Objection.  Vague and ambiguous.

24               Go ahead.  Go ahead.

25               THE WITNESS:  I did not, was not the source of

1 the writing of the document.

2 I reviewed the document and, to the best of my  
3 abilities at that time, felt that it generally  
4 reflected -- how do I rephrase this?

5 I will also say that I was not in charge of

6 legal strategy in terms of how to --

7 BY MR. NEUKOM:

8 Q I'm not asking about legal strategy, sir. I

9 am --

10 MR. FERRALL: No, no. Let him answer the  
11 question.

12 MR. NEUKOM: No. He's about to -- he's talking  
13 about Cisco legal strategy.

14 THE WITNESS: I simply said --

15 BY MR. NEUKOM:

16 Q It's an appropriate time for me to interject.

17 A I just said, I'm not in charge of legal  
18 strategy.

19 Q I don't want you to go down that road.

20 A I'm very clear. I'm not going down that road  
21 other than to say, I was not in charge of legal strategy.

22 Q You were in charge of signing your name to the  
23 document under penalty of perjury and doing so to the  
24 best of your ability.

25 A To the best of my ability.

1 MR. FERRALL: Counsel, you asked a why question  
2 about this document. Now, you want to prevent him from  
3 answering it.

4 So you better be careful what you ask for.  
5 Okay?

6 MR. NEUKOM: No, no, no.

7 Are you kidding me, Brian?

8 MR. FERRALL: I'm not kidding you.

9 Read your question back. You're asking why  
10 questions about this document, and you're not letting him  
11 to explain it.

12 I'm not telling him he shouldn't explain it, but  
13 don't interrupt him when you ask him a why question about  
14 this legal document.

15 MR. NEUKOM: So there's a fair amount of  
16 saber-rattling today.

17 I think today is a fairly gentlemanly day if  
18 this witness, in response to a question you like or don't  
19 like, if he starts indicating he is going down to work  
20 that has privileged and work product implications,  
21 because he used to be a Cisco executive involved with  
22 legal, I will interrupt him. If he starts going down a  
23 road that indicates Arista privilege, I take it you will  
24 interrupt him. There's nothing improper about that.

25 You may not like how this witness is testifying

1 Q Prior to today's deposition, have you -- and I  
2 intend this to be a yes or no -- have you undertaken any  
3 actions intending to find or collect documents for  
4 purposes of this litigation?

5 A No.

6 Q All right. No further questions at this time.

7 A All right.

8 THE VIDEOGRAPHER: No questions?

9 MR. FERRALL: I have some questions.

10 THE VIDEOGRAPHER: Okay.

11 EXAMINATION

12 BY MR. FERRALL:

13 Q And let me just say for both your sake,  
14 Mr. Giancarlo, and Mr. Neukom's sake, I take Mr. Neukom  
15 at his word that he doesn't intend to waive any Cisco  
16 privilege. And so I'm going to ask some questions that  
17 may well touch upon privilege, so I want to make sure  
18 that you give Mr. Neukom a chance to understand the --  
19 and instruct you, if necessary.

20 I'm going to instruct you also not to reveal  
21 privileged information, but also give Mr. Neukom a chance  
22 before you answer these questions, okay, because I don't  
23 want any inadvertent --

24 A I will wait for Mr. Neukom to give me the  
25 heads-up to -- I will wait after each question for you to

1 indicate what you want me to do.

2 MR. NEUKOM: Thank you. I appreciate that.

3 You know, one aspect here is, of course, I was  
4 not a lawyer for Cisco back in the day.

5 THE WITNESS: Uh-huh.

6 MR. NEUKOM: So there may be questions that  
7 implicate privilege or work product, even though it's not  
8 apparent to me on the face of the question. So simply  
9 because I do not object, I'm going to try to be curious,  
10 Mr. Farrell, and not make placeholder objections in  
11 response to every question.

12 MR. FERRALL: I'll do the best I can to. I  
13 don't always necessarily -- you know, if I ask, you know,  
14 general counsel what they had for lunch, I won't assume  
15 that's privileged, but I will be as careful as possible.

16 MR. NEUKOM: Thank you.

17 BY MR. FERRALL:

18 Q Okay. So my questions are going to be about  
19 Exhibit 601. So if you could -- it's your declaration?

20 A This one?

21 Q Right.

22 And my first question refers to paragraph 11.

23 A Uh-huh.

24 Q To be careful about the privilege, I'm just  
25 going ask you to answer this yes or no.



1 But focusing on the second sentence of  
2 paragraph 11, the one that begins, "According to Cisco's  
3 allegations."

4 Do you see that?

5 A I do.

6 Q All right. Were you in charge of deciding what  
7 allegations Cisco should bring in this suit against  
8 Huawei?

9 A I was not.

10 MR. NEUKOM: I'll put a conditional privilege  
11 work product objection there.

12 BY MR. FERRALL:

13 Q The -- again, be careful.

14 Without revealing --

15 A I'm trying to.

16 Q Without revealing any attorney-client  
17 information or communications or work product, are you  
18 able to explain why Cisco asserted claims against Huawei  
19 that reference the CLI in this litigation?

20 Is it possible for to you answer that question  
21 without revealing privileged or attorney work product?

22 MR. NEUKOM: I'm going to object on privilege  
23 and work product basis.

24 I have a very, very hard time imagining a world  
25 in which a nonlawyer engineer with an MBA has an

1 understanding of rationales to or to not bring certain  
2 claims.

3 But if I'm wrong, if you have some nonprivileged  
4 basis on which to answer Mr. Ferrall's question, you  
5 should do that.

6 THE WITNESS: Yeah, I can't answer the question.

7 BY MR. FERRALL:

8 Q Are you able -- again, without revealing  
9 privileged or work product information, are you able to  
10 explain why this declaration, marked as Exhibit 601, has  
11 any particular content in it; in other words, why was  
12 certain content included or not included?

13 MR. NEUKOM: Objection. Vague. Compound. And  
14 I think attorney client privilege and work product,  
15 although I confess I don't understand the question well  
16 enough to know whether those privileges are implicate --

17 MR. FERRALL: I'm trying to be careful. But  
18 fair enough, the question was vague.

19 BY MR. FERRALL:

20 Q Did you -- did you come up with the content of  
21 this declaration that is Exhibit 601; and I don't mean  
22 the specific words in it, but the essence of what it was  
23 going to describe?

24 You can answer that yes or no.

25 A Yeah. I'm waiting in each case for --

1 MR. NEUKOM: I will only do that on attorney  
2 work product and attorney-client privilege.

3 However, I'm happy to have you answer yes or no.  
4 In fact, I think that Q and A has been answered yes or no  
5 previously today, so subject to the yes-or-no answer.

6 THE WITNESS: So the answer is I -- no.

7 BY MR. FERRALL:

8 Q Okay. And to your knowledge, was this  
9 declaration, Exhibit 601, drafted by attorneys for Cisco?

10 MR. NEUKOM: That, I'm -- that, I think, cut a  
11 lot closer to the line.

12 I think -- and, Brian, if you want me to shut my  
13 trap, feel free. I think the witness testified before  
14 that he didn't write it, but he did review it, and he did  
15 sign it, and he did stand by it, all that stuff.

16 But I think asking who -- who drafted it, to my  
17 mind -- if you ask me why it matters, I may struggle, but  
18 that seems a little more -- a little more sensitive in  
19 terms of work product or attorney-client privilege basis.

20 So to that question as to who drafted it, I  
21 would object on work product and privileged ground.

22 And I think, on that one, I would make an  
23 instruction to the witness.

24 BY MR. FERRALL:

25 Q All right. Then I assume this is going to go

1 for the next questions, and that's fine.

2 Again, I -- I need to understand what is

3 privileged and what's not. Let's look at paragraph 12.

4 A Okay.

5 Q All right. Do you recall any drafts or edits to  
6 the language in paragraph 12?

7 MR. NEUKOM: On one hand, you can answer that  
8 yes or no.

9 And I'll put in a conditional -- you know what,  
10 I think that question just goes to such improper work  
11 product stuff, I'll instruct you not to answer that --

12 MR. FERRALL: Okay.

13 MR. NEUKOM: -- unless -- and, Brian, on some of  
14 these, I mean, if you have different -- if you want to  
15 push back on privilege, and we can have a discussion on  
16 it, I'm happy to have a discussion on it.

17 This is a little bit of uncharted territory.  
18 But I think questions about drafts: were there drafts,  
19 were there edits, I think, has -- to my inclination,  
20 that's attorney work product and/or attorney-client  
21 privileged, but -- so I think that's off limits.

22 BY MR. FERRALL:

23 Q Okay. All right. And again, for the record,  
24 though, I got to ask this next one, too, because there  
25 was a sentence in paragraph 12 which was referred to,

1 either by you, Mr. Giancarlo, or Mr. Neukom, or by both  
2 of you, as misleading or inartfully worded.

3 So my question to you is, were you -- and what  
4 we're talking about is the sentence beginning, "This  
5 interface, which is unique to Cisco."

6 Do you remember that sentence?

7 A I do.

8 Q Did you draft that sentence?

9 MR. NEUKOM: You can answer that yes or no,  
10 although I think it's already been -- I think you already  
11 have, but you can do it again.

12 THE WITNESS: I did not.

13 BY MR. FERRALL:

14 Q And can you tell me any discussion you had or  
15 edits you had to that sentence in the course of preparing  
16 this declaration?

17 A Unfortunately --

18 MR. NEUKOM: Counsel knows you cannot answer  
19 that.

20 THE WITNESS: I cannot.

21 BY MR. FERRALL:

22 Q This declaration, Exhibit 601, has an indication  
23 on the bottom, and I think that's why it has this odd  
24 cover sheet that it was filed under seal.

25 Do you see that on the bottom left corner?

1 A Confidential or -- oh, filed under seal, yes.

2 Q All right. Did you have -- and again, just yes  
3 or no: Did you have any responsibility for determining  
4 whether this would be filed under seal?

5 A No.

6 Q Would -- again, don't tell me any conversations  
7 you had with lawyers.

8 But if possible, based upon your own belief, can  
9 you tell me why you understand it was filed under seal?

10 MR. NEUKOM: I'm going to instruct you on --  
11 just outright not to answer that.

12 If there's a hypothetical world in which you  
13 independently, as an engineer, formed an opinion of the  
14 basis of a protective order status of a legal filing, go  
15 for it. Please give your full and most accurate  
16 testimony to Mr. Farrell.

17 THE WITNESS: Indeed.

18 MR. NEUKOM: Otherwise, in every one of those  
19 nine million possible worlds, that's privileged.

20 BY MR. FERRALL:

21 Q Okay. Did you ever share this Exhibit 601 with  
22 Arista?

23 A Certainly not.

24 Q Are you --

25 A And nor -- I'm sorry.

1 I don't know if I -- did you want to say  
2 something?

3 MR. NEUKOM: No.

4 THE WITNESS: Nor do I have a copy of it.

5 BY MR. FERRALL:

6 Q At least before this litigation began, before  
7 Cisco sued Arista, were you ever aware of this  
8 declaration becoming public?

9 A Oh, no.

10 Q At the time that Cisco brought this claim  
11 against Huawei, were you aware of other Cisco competitors  
12 whose CLI commands were similar to Cisco's CLI commands?

13 A I'm sorry. This is prior to this?

14 Q To the Huawei lawsuit.

15 A Yes.

16 Q To your knowledge, again, without revealing any  
17 attorney privileged communications, but to your  
18 knowledge, did Cisco sue any of those other competitors?

19 A No.

20 Q And without revealing any attorney-client  
21 communications, is it possible for you to tell me any  
22 Cisco business reasons for why Cisco did not sue any of  
23 those other competitors with CLI commands?

24 MR. NEUKOM: Objection. Vague and compound and  
25 foundation.

1 THE WITNESS: Can I answer or do I not?

2 I'm sorry. I don't know.

3 MR. NEUKOM: You can.

4 To be clear, Mr. Ferrall asked you for business  
5 reasons. So I think he was trying to be gracious to not  
6 get into, for example, any communication that you and Dan  
7 Scheinman or others had.

8 THE WITNESS: No. Right. I think I'm aware of  
9 the situation.

10 So I cannot give you business reasons for it.

11 BY MR. FERRALL:

12 Q Okay. And I take it if, I were to ask for any  
13 reasons why that decision was made, that's going to call  
14 for privileged information?

15 A It would call for privilege, correct.

16 MR. FERRALL: I have no further questions.

17 Thank you.

18 MR. NEUKOM: Two questions, I hope. And then  
19 we're done.

20 THE WITNESS: Me, too.

21 EXAMINATION

22 BY MR. NEUKOM:

23 Q Exhibit -- your old Huawei declaration, what  
24 exhibit is it, 601?

25 A 601.



1 Q You reviewed it before you signed it?

2 A I did.

3 Q You signed it under penalty of perjury?

4 A You keep reminding me of this.

5 Q Lawyers have a bad habit of doing that.

6 A Yes.

7 Q You believed every word of it to be true at the  
8 time you signed it?

9 A I -- obviously, when any document that has this  
10 many words in it, you have your interpretation of the  
11 words at the time you signed it. And I believed it at  
12 the time I signed it, based on my interpretation at the  
13 time.

14 Q And after signing it -- I said, two questions.  
15 I should say, two family of questions.

16 After signing the declaration -- I think you  
17 said this before -- since signing the declaration, you  
18 took no steps to change, retract, or change any portion  
19 of it?

20 A Correct. I've never seen it again since then.

21 Q Second brief topic of recross-examination.

22 Mr. Ferrall asked you if this declaration,  
23 Exhibit 601, whether you had ever shared it with anyone  
24 at Arista.

25 And I believe your answer was no.

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1 A Correct.

2 Q Am I remembering that right?

3 A Yes.

4 Q To be clear, though, at the time -- strike that.

5 I'm done. Thank you.

6 THE VIDEOGRAPHER: All right.

7 MR. FERRALL: Wait.

8 THE WITNESS: Sorry. I dropped it.

9 EXAMINATION

10 BY MR. FERRALL:

11 Q When Mr. Neukom asked you if you signed this  
12 under penalty of perjury, was there anything that you  
13 relied upon from Cisco counsel in affirming the  
14 statements in this declaration, Exhibit 601?

15 A Wow.

16 MR. NEUKOM: I'm going to -- I am going to  
17 object on privilege.

18 And given the declaration statement that it's  
19 based on personal knowledge, I'm going to instruct not to  
20 answer, not to disclose any communications from -- that  
21 you had from counsel relating to this.

22 I think you said in the first paragraph that you  
23 had personal knowledge of all of it. And I asked you to  
24 verify that, which means you should be able to swear up  
25 its contents without talking about something that a

1 lawyer did or did not say to you. That wouldn't be  
2 personal knowledge. That would be secondhand.

3 But, Brian, if you want to, if you think you can  
4 answer this question without disclosing the substance of  
5 attorney-client communications --

6 THE WITNESS: I think I can say that it's fair  
7 to say that legal language is not my forte and that when  
8 there were -- obviously, as we've been going through  
9 this, there are some things that are fairly involved and  
10 complex in interpretation and meaning. And I was -- that  
11 was discussed with counsel.

12 MR. NEUKOM: No. Then I'm going to object after  
13 the fact on attorney-client privileged ground.

14 And Cisco would move to strike the witness' last  
15 answer on the basis of privilege.

16 If it helps, Mr. Giancarlo, my view of privilege  
17 is folks who are not Cisco or who are not Cisco counsel,  
18 they're allowed to know, you know, what lawyer -- the  
19 name of the lawyer you talked to, how long you talked  
20 with them, and what the subject matter was --

21 THE WITNESS: Uh-huh.

22 MR. NEUKOM: -- subject matter being something  
23 like the Huawei lawsuit or my mother's estate planning;  
24 the subject matter not being things like, you know,  
25 whether the blue-footed boobie emigrates or migrates in

1 the spring versus the fall.

2 It's a very broad scope of subject matter that  
3 can be disclosed to folks outside the attorney-client  
4 privilege.

5 THE WITNESS: Can I ask you a question?

6 MR. NEUKOM: Sure.

7 THE WITNESS: When any legal document is signed,  
8 is it unusual for there to be legal counsel involved in  
9 explaining the document and the meaning of the document?

10 MR. NEUKOM: It's absolutely not unusual. But  
11 that's why, basically, every declaration says it's based  
12 on personal knowledge or not, to the extent it's not,  
13 people have to make it clear.

14 THE WITNESS: There's personal belief of facts  
15 and then there's discussion about interpretation of  
16 phrases.

17 MR. NEUKOM: That is always privileged.

18 The question is if you have a personal -- if you  
19 have personal knowledge, to sign your name to an  
20 affidavit or declaration or what have you. And if you  
21 do, you can make the statement, well, properly, with or  
22 without zero or millions of hours of consultation with  
23 counsel.

24 But what -- what you and what any witness waives  
25 privilege on are the contents of the statements that you

1 made based on personal knowledge.

2 THE WITNESS: I understand.

3 MR. NEUKOM: And that's about it.

4 THE WITNESS: All right.

5 MR. NEUKOM: Beyond that, Mr. Ferrall can know,  
6 for example, did you consult with an attorney.

7 THE WITNESS: And that's all I was saying.

8 MR. NEUKOM: Yes or no, and that's it.

9 THE WITNESS: That's all I was saying. I  
10 believe that's what I said, is that it was done with  
11 consultation of an attorney, of a Cisco attorney, not a  
12 personal attorney.

13 BY MR. FERRALL:

14 Q Right. And to be clear, I'm -- what I'm trying  
15 to get at, Mr. Giancarlo, is, as counsel notes, there's a  
16 statement in the beginning that says, "I have personal  
17 knowledge of these facts."

18 There's a statement at the end that says, "I  
19 declare under penalty of perjury."

20 I'm trying to understand, as you think  
21 Mr. Neukom is suggesting, if the contents of this  
22 declaration are based upon facts that you know and not  
23 based upon some interpretation of those that's provided  
24 by Cisco or Cisco's lawyers, because if it's the latter,  
25 then I think we're entitled to know that.

1           If it's, these are my words, and I'm the one who  
2       endorsed these, then I would like that clarified.

3           MR. NEUKOM: No, no. You're conflating two  
4       concepts. And with respect -- I think you know you are.

5           Word choice in a witness' statement -- this  
6       witness has said -- I asked him early on and he said he  
7       didn't write it. But then he said he reviewed it and  
8       signed it and adopted it as his statement.

9           We all know many witness statements as  
10      affidavits are drafted, in whole or part, by attorneys  
11      and later adopted or not by witnesses. You can know what  
12      the personal belief is that this witness has behind this  
13      statement and this word choice, whether it came from him  
14      or somebody else, and that's it.

15          I do not believe that it's proper, under work  
16      product and privileged protections, for you to get  
17      into -- I don't even know if there was a debate, but I  
18      don't even know who the lawyers were, as I sit here  
19      today.

20          But for you to get in some sort of word choice  
21      debate --

22          MR. FERRALL: I'm not. I'm not.

23      BY MR. FERRALL:

24          Q     What I want to know is if your interpretation of  
25      this document, which you've provided under penalty of

1 perjury today, reflects what you understood at the time  
2 when you signed it, regardless of what attorneys at Cisco  
3 may have told you, one way or the other.

4 Okay. Do you understand?

5 A I don't think I do.

6 Q Okay.

7 MR. NEUKOM: Can I try to help?

8 I think this may help. I think Mr. Ferrall is  
9 asking you if the contents of Exhibit 601, at the tail  
10 end which is your signature, the contents of Exhibit 601  
11 at the time you signed it in February 2003, did they  
12 accurately capture your understanding, your knowledge at  
13 the time.

14 I think that's what I just heard.

15 MR. FERRALL: Well, no. No. Actually, it's not  
16 quite that.

17 BY MR. FERRALL:

18 Q Mr. Neukom asked you a lot of questions about  
19 the meaning --

20 A Yes.

21 Q -- about the words in this document.

22 A Uh-huh.

23 Q Okay. And what I'm trying to understand is  
24 simply whether that explanation of the meaning of the  
25 words in this declaration --

1 A Which explanation?

2 Q The explanations that you gave in this  
3 deposition today.

4 A We discussed, yes.

5 Q -- whether that explanation of the meaning of  
6 the words in this declaration was your interpretation  
7 when you signed this document at the time --

8 A Ah, okay.

9 Q -- as opposed to something you learned from  
10 counsel.

11 A Oh, oh, I see.

12 No. What I explained today was my interp --  
13 what I tried to be clear about, perhaps not fully  
14 competently, was I tried to explain my understanding of  
15 my interpretation of the document at the time that I  
16 signed it.

17 MR. FERRALL: Okay. I think that's all I want.  
18 Thank you.

19 THE WITNESS: Is that -- does that work? We're  
20 go on that, right?

21 MR. NEUKOM: You're free to go.

22 THE WITNESS: Very good. Thank you.

23 THE VIDEOGRAPHER: Going off the record. The  
24 time is 2:55.

25 This is the end of DVD No. 3 and today's